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RCN
Docket No. 98-147 and 96-98
12/12/2000

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
and	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF RCN TELECOM SERVICES INC.

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SUMMARY

This proceeding offers a further opportunity to further advance the pro-competitive goals of the Telecommunications Act of 1996, with comprehensive regulations governing physical collocation. In imposing the pervasive common carrier obligations under the Act – requiring incumbent LECs to provide interconnection, access to network elements and physical collocation to its competitors – Congress sought to achieve nothing less than competitive parity among CLECs and incumbent LECs. To achieve this objective in a rapidly changing telecommunications industry, the Commission should adopt regulations broadly requiring collocation of all CLEC equipment -- on reasonable and nondiscriminatory terms and conditions – that serves to facilitate interconnection and network access at least equal in quality to that incumbent LECs provide to themselves.

That he Commission has the requisite authority under the Act to take these necessary steps cannot be denied. The court's decision in *GTE Service Corp v. FCC*, 205 F.3d 416 (D.C. Cir. 2000) is not to the contrary. For the court did *not* foreclose the Commission from permitting CLECs to collocate a full range of contemporary telecommunications equipment on ILEC premises. The court merely sought a *limiting standard* for distinguishing the equipment deemed "necessary." As it appears in Section 251(c)(6), the term "necessary" is clearly intended to distinguish collocation that enables "interconnection and access to unbundled elements" (*id.*), thus incorporating the duty of incumbent LECs to provide interconnection "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary [or] affiliate,"

and both interconnection and access to network elements on just and reasonable and nondiscriminatory terms and conditions. *See* 47 U.S.C. § 251(c)(2)-(3).

On its face, the statute requires incumbent LECs to allow CLECs to collocate any equipment that: (i) is used by the incumbent LEC to provide interconnection or network access to *itself* or an affiliate; or (ii) facilitates interconnection or access to UNEs necessary for CLECs to provide competitive telecommunications service, on terms and conditions that are "just and reasonable" and "nondiscriminatory." Regulations that enforce this obligation remove the FCC from any role as an arbiter of the physical features and functionalities of equipment eligible for collocation, while accommodating evolving telecommunications technology and the interest of consumers in competitive service. For it is now clear that advances in loop functionality necessitate the use of multifunctional CLEC terminal equipment to achieve full network interconnectivity and access to UNEs.

The Commission should also require incumbent LECs permit CLECs to cross-connect with other CLECs on incumbent LEC central offices. Section 251(c)(6) does not limit collocation to equipment that provides "interconnection" *with the incumbent LEC.* Indeed, Section 251(c)(2)(C) requires the incumbent LEC to provide interconnection "at least equal in quality" to that which it provides to itself or other CLECs. To the extent that the incumbent LEC cross connects with itself or other CLECs, it must allow all CLECs to use their collocation space to cross connect with each other. Moreover, because any additional physical occupation of ILEC premises resulting from inter-CLEC cross-connection is trivial, allowing CLECs to do so is a reasonable condition of offering collocation.

The Commission should take a number of other steps to ensure competitive parity among incumbent LECs and collocating CLECs. First, that Commission should adopt rigorous rules requiring incumbent LECs to provide collocation at remote terminals, enabling CLECs to provide advanced services. Second, the Commission should adopt regulations for the collocation of equipment necessary to provide line sharing. Third, the Commission should adopt national standards for provisioning intervals applicable to collocation and augmentation of existing collocation arrangements.

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COMMENTS OF RCN TELECOM SERVICES INC.

RCN Telecom Services Inc. hereby responds to the Commission's notice of proposed rulemaking issued August 11, 2000,[1] seeking comment on the court's partial remand of the Commission's collocation rules in *GTE Services Corp. v. FCC*.[2]

ARGUMENT

In the Telecommunications Act of 1996,[3] Congress established a structural approach to opening the monopoly local exchange telecommunications market to competitive access by alternate providers, through interconnection, network access, and physical collocation. The Commission should reject the incumbent LECs self-serving interpretation of their obligations under the Act, and adopt regulations that guarantee the CLECs' statutory right to collocate the

[1] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking and Fifth Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 00-297 (rel. August 11, 2000) ("NPRM").

[2] *GTE Service Corp v. FCC*, 205 F.3d 416 (D.C. Cir. 2000), aff'ing in part, rev'ing in part, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, 14 FCC Rcd 4761 (1999)("*Collocation Order*").

[3] *See* Pub. L. 104-104, 110 Stat. 56 (codified as amended in various sections of Title 47 of the United States Code).

entire range of contemporary telecommunications equipment that serve to facilitates interconnection and access to network elements.

I. THE FCC SHOULD FULLY ENFORCE THE STATUTORY COLLOCATION OBLIGATION IMPOSED ON INCUMBENT

RCN submits that Section 251(c)(6) – which obligates incumbent LECs to "provide on terms and conditions that are just and reasonable, and nondiscriminatory, for physical collocation of equipment *necessary* for interconnection or access to unbundled elements"[4] – confers broad authority on the FCC to impose a full range of collocation obligations on incumbent LECs. *First,* the "ordinary and fair meaning of the term "necessary," as used in that section, allows the FCC to require LECs to provide collocation that advances the pro-competitive objectives of the Act. *Second*, the structure of Section 251(c)(6) demonstrates that the incumbent LECs' obligation to allow collocation is coextensive with their obligation to provide interconnection and access to network elements on just and reasonable and nondiscriminatory terms and conditions.

In adopting regulations defining the scope of collocation "necessary for interconnection and access to unbundled network elements," the FCC must begin with the court's decision in *GTE Service*, rejecting the requirement that incumbent LECs collocate any competitors' equipment that is "used or useful."[5] There, the court seized on the Commission's failure to acknowledge any limiting standard implied by the use of the term "necessary," noting that the "used and useful" standard in the FCC's *Collocation Order* would permit CLECs to collocate

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[4] 47 U.S.C.§ 251(c)(6) (emphasis added).

[5] 205 F. 3d at 422.

equipment with functionalities unrelated to interconnection or network access.[6] Illustrating its point with a narrow definition of "necessary" -- as limiting as "used and useful" is permissive -- the court stated that the term necessary "is *at first blush*, fairly straight forward. Something is necessary if it is required or *indispensable* to achieve a certain result."[7] However, the court did *not* adopt such a restrictive definition of the word "necessary." To the contrary, in remanding certain of the Commission's collocation rules, the court held that "a statutory reference to 'necessary' must be construed in a fashion that is consistent with the *ordinary and fair meaning of the word* . . . so as to limit 'necessary' to that which is required *to achieve a desired goal.*"[8]

Where, as here, Congress adopted Section 251(c)(6) specifically to overrule the court's narrow interpretation of its authority in *Bell Atlantic v. FCC*,[9] the statute should be interpreted broadly in accordance with the Commission's manifest attempt to expand Commission authority.[10] The *Bell Atlantic* court rejected the FCC's claim that Section 201(a) of the Communication Act authorized involuntary physical collocation, analogizing Section 201(a), which "'require physical connections with other carriers'",[11] with Section 11104(a) of the Interstate Commerce Act ("ICA"), which authorizes the ICC (now the Surface Transportation Board or "STB") to order "switch connections" between railroads.[12] The court focused on

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[6] *Id.* at 423.

[7] *Id.* (emphasis added).

[8] *Id.* at 423.

[9] 24 F.3d 1441 (D.C. Cir. 1994).

[10] *See Public Citizen, Inc. v. Federal Aviation Administration*, 988 F.2d 186, 195-196 (D.C. Cir. 1993).

[11] *Id.* at 337, quoting 47 U.S.C. § 201(a).

[12] *Id.* citing 49 U.S.C. § 11103(a).

Section 11103(a) of the ICA -- which authorizes the ICC to order carriers to open their "terminal facilities" to other carriers[13] – and based its decision upon the absence of any correlative provision in the Communications Act.[14] In adopting Section 251(c)(6) – which is almost identical to Section 11103(a) of the ICA[15] – Congress must be presumed to have been aware not *only* of the court's decision in *Bell Atlantic v. FCC*, but *also* that Section 11303(a) of the ICA has been consistently interpreted as conferring broad authority order terminal rights to facilitate the free flow of traffic between carriers and facilitating inter-carrier competition.[16]

Under a very similar statutory provision, the Court in *National Railroad Passenger Corp. v. Boston and Maine Corp*,[17] upheld the ICC's interpretation of the condemnation provisions of the Rail Passenger Service Act, which authorized the ICC to condemn [freight railroad] property . . . *required* for intercity rail passenger service."[18] The ICC had condemned the Boston and Maine's entire fee interest in the property, notwithstanding that: (1) such fee interest was *not* indispensable to Amtrak's operations; (2) Amtrak could have provided the same service with a

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[13] *Id.*, quoting 49 U.S.C. § 11102(a) (emphasis added).

[14] *Id.*

[15] Specifically, Section 11303(a) authorizes the STB to order terminal rights to other carriers "including main-line tracks for a reasonable distance outside of a terminal," where such use *is practicable* and in *the public interest* without substantially *impairing* the ability of the [tenant] rail carrier . . . to handle its own business." 49 U.S.C. § 11303(a).

[16] *See, e.g.*, *Florida East Coast Railway Co. v. United States*, 256 F. Supp. 986, 989 (three-judge panel) (M.D. Fla. 1966).

[17] 503 U.S. 407 (1992, rev'g *Boston and Maine Corp. v. ICC*, 911 F.2d 743 (D.C. Cir. 1990).

[18] 45 U.S.C. § 562(d)(1). The need for the property sought by Amtrak was deemed to be established *unless* the ICC found that the conveyance of the property would impair the ability of the freight railroad to carry out its common carrier obligations, or if Amtrak could adequately be met by the acquisition of some alternative property available on reasonable terms. *Id.* at §562(d)(1)(A)-(B).

leasehold interest (*i.e.*, trackage rights); and (3) Amtrak intended not to retain the fee interest, but instead planned to reconvey the fee to a third party. Rejecting the court of appeals' interpretation of the term "required" as meaning "indispensable to Amtrak's operations,"[19] the Supreme Court upheld the ICC's less restrictive interpretation of "required" to mean "useful or appropriate."[20]

The definition of "necessary and impair" adopted by the Commission in its *UNE Remand Order*, has no application under Section 251(c)(6). In *AT&T v. Iowa Utilities*, *supra*, the Court found that the FCC's *Local Competition Order* – which defined UNEs without regard to available alternatives or any adverse operational impact on the incumbent LECs – effectively nullifed the "necessary and impair" standard,[21] "allow[ing] entrants, rather than the Commission, to determine whether access to *proprietary* elements is necessary and whether the failure to obtain access to *non*proprietary elements would impair the ability to provide service . . . ."[22] However, the "necessary and impair" requirement in Section 251(d)(2) is expressly limits the UNE access obligation imposed elsewhere in Section 251; the term "necessary" appears in Section 251(c)(6) in the context of an *additional* obligation (*i.e.* collocation) that *enhances* the interconnection and network access obligations imposed in Section 251. Second, unlike the "necessary" standard in Section 251(d)(2) the term "necessary" in Section 251(c)(6) neither adds to any other restriction nor does it concern proprietary network elements.

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[19] *Id.* at 417.

[20] *Id.* at 418.

[21] *Iowa Utilities*, 525 U.S. at 388-389, quoting *Local Competition Order* at ¶ 283. According to the Court, the FCC's rationale that a CLEC would not request access to the incumbent LEC's network element, unless that was the least expensive and best quality, gave the CLEC's unilateral authority to determine the scope of the incumbent LEC's obligation to provide access to network element. 525 U.S. at 389.

[22] *Id.* (emphasis added).

Such is the "fair and ordinary" meaning of "necessary" that emerges from literally hundreds of judicial opinions addressing the use of the term in the context of common carrier and franchised utility regulation. The Supreme Court's decision in *McCulloch v. Maryland*,[23] is seminal in addressing the various interpretations of the term "necessary." There, the promoters of a federally chartered National Bank inferred congressional authority to establish the Bank from the "necessary and proper" clause, forcing Chief Justice Marshall's expansive interpretation of the term "necessary."[24] Justice Marshall contrasted the *unqualified* use of the term "necessary" in Article I, Section 8 – to define the means by which Congress could exercise its enumerated powers – with the restrictive use of the term "absolutely necessary" in Article I, Section 10, in severely restricting the authority of the states to levy import duties.[25] As in *McCulloch*, Section 251(c)(6) employs the term "necessary," without qualification, in providing for collocation that enables interconnection and network access. The Supreme Court has consistently interpreted the phrase "public convenience and necessity" to broadly delegate congressional authority to agencies in formulating regulatory policy.[26] The states have been even more explicit in

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[23] 17 U.S. 316 (1819).

[24] *Id.*

[25] Upholding the Bank as a "necessary and proper" means of exercising Congress's powers, Justice Marshall explained that:

> 1st. The clause is placed among the *powers* of congress, *not* among the *limitations* on those powers. 2d. Its terms purport to *enlarge* not to *diminish* the powers vested in the government. *It purports to be an additional power, not a restriction on those already granted.* No reason has been, or can be assigned for thus concealing an intention to narrow the discretion of the national legislature, under words which purport to enlarge it.

Id. at 419 (emphasis added).

[26] *See, e.g., Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281 (1974); *Shaeffer Transportation Co. v. United States*, 355 U.S. 83 (1957); *United States v. Detroit & Cleveland Navigation Co.*, 326 U.S. 236, 241 (1945); *ICC v. Parker*, 326 U.S. 60, 65-66 (1945); *Chesapeake & Ohio Ry. v. United* States, 283 U.S. 35, 42 (1931.

interpreting the term "necessary" in the regulatory context.[27] Where, as here, Congress dramatically expanded the power of the FCC to order physical collocation in adopting Section 251(c)(6) of the Act only a broad interpretation of "necessary" will suffice.

RCN recognizes that Section 251(c)(6) allows the FCC to require collocation *only* of equipment "directly related to" or "necessary, required or indispensable to *interconnection* or *access to unbundled network elements*."[28] However, the term "necessary" must, by definition, comprehend the entire scope of the interconnection and network access obligations imposed in Section 251(c)(2)-(3). Section 251(c)(2) requires incumbent LECs to provide interconnection "that is *at least equal* in quality to that provided by the local exchange carrier *to itself* or to any subsidiary [or] affiliate," and "on rates terms and conditions that are just and reasonable and nondiscriminatory."[29] Section 251(c)(3) similarly obligates incumbent LECs to provide access to network elements on "rates terms and conditions that are just and reasonable and nondiscriminatory. . . ." 47 U.S.C. § 251(c)(3). And once collocation is deemed necessary, Section 251(c)(6) reaffirms the incumbent LECs obligation to provide collocation on terms and conditions that are "just and reasonable and nondiscriminatory." 47 U.S.C. § 251(c)(6).

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[27] Thus, for example, in *Wabash, Chicago & Western Ry. Co. v. Commerce Commission*, 141 N.E. 212 (Ill. 1923), the Illinois Supreme Court stated that:

> the word "necessity" is not used in its lexicographical sense of "indispensably requisite." If it were, no certificate of public convenience and necessity could ever be granted. The first telephone was not a public necessity under such definition, nor was the first electric light. Even the construction of a waterworks system in a village is seldom necessary, though highly desirable. However, any improvement which is highly important to the public convenience and desirable for the public welfare may be regarded as necessary. If it is of sufficient importance to warrant the expense of making it, it is a public necessity.

Id. at 218.

[28] *GTE Service*, supra, 205 F.3d at 424 (emphasis added) citing 47 U.S.C. §251(c)(6).

[29] 47 U.S.C. § 251(c)(2)(C)-(D) (emphasis added).

Such cumulative duties of reasonableness, nondiscrimination and competitive parity clearly justify the imposition of broad generic collocation requirements based on pervasive evidence of discrimination and denial of competitive access. Under far more prosaic regulatory statutes, such the Interstate Commerce Act ("ICA"),[30] the Natural Gas Act,[31] the Federal Power Act,[32] as well as the Communications Act, the courts have observed repeatedly that proscriptions against "undue" or "unreasonable" discrimination comprehend *every* form of unreasonable discrimination within the power of Congress to condemn.[33] Thus, in *Associated Gas Distributors v. FERC*,[34] the court upheld Order No. 436[35]-- which imposed common carrier, open access requirements on vertically integrated, producer-owned or affiliated natural gas pipelines -- based *solely* upon the FERC's authority to prevent undue discrimination in Section 5 of the NGA.[36] More recently, in *Transmission Access Policy Study Group v. FERC*,[37] the FERC's imposition of a *generic* involuntary wheeling obligation imposed on *all* public utilities with electric transmission facilities – dismissing industry objections that the Energy Policy Act

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[30] 49 U.S.C. § 2, 3(1) (1977).

[31] 15 U.S.C. § 717 *et seq.*

[32] 16 U.S.C. § 824.

[33] *See*, e.g., *Merchants Warehouse Co. v. United States*, 283 U.S. 501, 512 (501); *Louisville & Nashville R.R. Co. v. United States*, 282 U.S. 740, 749-750 (1931); *Louisville & Nashville R.R. Co. v. Mottley*, 219 U.S. 467, 478 (1911) (purpose of Congress in adopting such provisions was nothing less than to "cut up by the roots *every* form of discrimination, favoritism and inequality.").

[34] 824 F.2d 981 (D.C. Cir. 1986).

[35] 50 Fed. Reg. 42,408 (1985).

[36] *See* 15 U.S.C. § 717(d).

[37] 2000 WL 762706 *3, **7-8 (D.C. Cir.).

of 1992 authorized involuntary wheeling only on an *individual, case-by-case* basis –[38] based on largely anecdotal findings of discrimination that triggered the FERC's authority under nondiscrimination provisions of the Federal Power Act ("FPA").[39]

Where, as here, the Act is specifically designed to ensure competitive access to bottleneck facilities on a nondiscriminatory terms and conditions, the Commission's authority is necessarily broad, given evidence of generic discrimination or barriers to entry in the industry. The incumbent LECs' dual role -- (1) as a retail local telecommunications provider; and (2) as a wholesale provider of interconnection service and access to network elements – creates an inherent incentive to discriminate in the provision of collocation.[40] Congress explicitly acknowledged this dual role in requiring incumbent LECs to provide interconnection "at least equal in quality to that provided . . . *to itself or to any subsidiary* . . . ."[41] Moreover, Congress gave the Commission's considerably broader authority to prevent discrimination under Section 251 than under the other statutory schemes discussed above (*including* Section 202(a) of the 1934 Act),[42] by not qualifying the term "discrimination" with terms like "undue" or "unjust and

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[38] *See* Pub. L. No. 102-496, 106 Stat. 2776, 2915-16, codified at 16 U.S.C. §§ 824j-k.

[39] *See* 16 U.S.C. § 824d-e.

[40] In interpreting these and other provisions of the Act, the FCC recognized the incentive of incumbent LEC (as wholesale provider) to discriminate in favor of its retail arm and against CLECs. According to the Commission:

> Given that the incumbent LEC will be providing interconnection to its competitors pursuant to the purpose of the 1996 Act, the LEC has an incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself. Permitting such circumstances is inconsistent with the procompetitive purpose of the Act.

Local Competition Order at ¶ 218.

[41] 47 U.S.C. § 251(c)(2)(C) (emphasis added).

[42] *Id.*

unreasonable." Accordingly, the Commission has stated that "the term nondiscriminatory, *as used throughout section 251*, applies to the terms and conditions an incumbent LEC imposes on third parties as well as on itself."[43]

II. THE COMMISSION SHOULD REESTABLISH AND STRENGTHEN RULES GOVERNING COLLOCATION IN ILEC CENTRAL OFFICES.

A. The Commission Should Require Incumbent LECs to Collocate All Equipment That Facilitates Interconnection Or Network Access On Terms That Are Just And Reasonable And Non Discriminatory.

Consistent with the full breadth of its authority under Section 251(c)(6), the Commission should require incumbent LECs to provide for collocation of any and all equipment that: (i) is used by the incumbent LEC *itself* (or an affiliate) to provide interconnection or access to UNEs; or (ii) facilitates interconnection or access to UNEs on terms and conditions that are "just and reasonable" and "nondiscriminatory." Even if equipment used to provide interconnection or access to UNEs contains other functions that are not themselves necessary for interconnection or access to UNEs, such multi-function equipment should continue to be eligible for interconnection under the necessary standard as a just and reasonable condition of collocation. Such a definition would provide ample authority for the Commission to reestablish the requirement that ILECs permit CLECs to perform their own cross-connects with other CLECs on incumbent LEC premises, just as incumbent LECs do themselves. Finally, it would allow the Commission to expand further the obligation of incumbent LECs to provide collocation at remote terminals and to establish other terms and conditions governing the rights and priorities of collocators in incumbent premises.

[43] *Local Competition Order* at ¶ 218.

B. CLECs Should Be Allowed To Collocate All Equipment That Facilitates Interconnection, Including Packet Switches and Other Advanced Services Equipment.

Under such a standard, CLECs should be allowed to collocate equipment that provides packet switching or routing, such as DSLAMs, routers, asynchronous transfer mode ("ATM") multiplexers, and remote switching modules necessary to provision of advanced services.[44] While such equipment clearly facilitates interconnection and network access, it is also essential to the provision of advanced telecommunication services. And incumbent LECs are increasingly installing such equipment interconnect local loops and transport beyond the central office. The naïve suggestion that such equipment provides switching, and thus is ineligible for collocation is based on an overly simplistic definition of "interconnection" and "network access," an unduly narrow view of the function of "switching."

The reflexive claim of ILEC that collocation of advanced services equipment – on the ground that such equipment is switching equipment – is a pure red-herring. The Act does not define "interconnection" or "access" to network elements. In its *Expanded Interconnection Orders* that preceded the 1996 Act,[45] the Commission decided against collocation of switches in incumbent LEC space but *only* because: (1) most interconnectors preferred to place their equipment in their own space; (2) most of the parties agreed that there was no technical or quality advantage to collocating switches in incumbent LEC central offices; (3) the size and weight of the switches (most of which would have occupied several hundred square feet) would lead to the exhaustion of space and require considerable property upgrades to provide for

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[44] *NPRM* at ¶ 72.

[45] *See Expanded Interconnection with Local Telephone Company Facilities (Transport, Phase II)*, Third Report and Order, CC Docket No. 91-141, 9 FCC Recd. 2718 (1994) ("*Expanded Interconnection Third Report and Order*").

heating, ventilation and air conditioning; (4) no parties had offered any reason why it would be difficult to distinguish switching equipment from transmission equipment; (5) no parties had shown the need for collocation of such equipment to ensure fair and nondiscriminatory treatment of interconnectors by CLECs; and (6) the Commission's tariffing and general nondiscrimination requirements provided sufficient protection against unfair or unreasonably discriminatory LEC rates and practices.[46]

These considerations are no longer valid. First, unlike the case in the FCC's *Expanded Interconnection Order*, Congress's objective in adopting the Act was to provide for workable competition in the local exchange service market – including advanced services – in *addition* to exchange access. The issue *now* is not whether incumbent LECs can erect barriers to entry by interexchange carriers, the FCC's mandate is to remove all barriers to competition throughout the entire local exchange network. Second, it is no longer true that most interconnectors do not seek to place certain types of advanced switching equipment in central offices. As the variety of services that can be offered in over the local exchange network increases, the equipment used by CLECs to provide such service grows exponentially, as does the potential for discrimination and barriers to entry. These new services include the various forms of Digital Subscriber Line ("xDSL") service, line sharing, and DLC and next generation IDLC systems that push fiber farther and farther from the central office to increasingly sophisticated remote terminals. The impact of such technology on the variety of equipment that facilitates interconnection provides substantial opportunity for incumbent LECs to exclude competition with network design choices that favor themselves or their advanced service affiliate.

[46] *Id.* at ¶ 35.

Adoption of generic collocation requirements for advanced services equipment is justified by the FCC's recent *Project Pronto Order*.[47] There, the Commission approved certain modifications to the separate data affiliate conditions imposed in the *SBC/Ameritech Merger Order*,[48] granting a waiver that permitted SBC/Ameritech LECs to own advanced services equipment such as OCDs, ATM switches and DSLAMs placed in remote terminals and central offices subject to a number of conditions. In return, SBC/Ameritech agreed to: (1) offer CLECs the right to competitive access to its all the network elements used in conjunction with its "Broadband Offering;" (2) allow CLECs the right to install "plug-in" cards in NGDLC systems; and (3) allow expanded collocation at central offices and at remote terminals. The Commission's findings of discriminatory incentives and behavior in the case of SBC/Ameritech opens the door to broader findings of discrimination on the part of other LECs. Verizon is but one example of an incumbent LEC that has steadfastly resisted interconnection with and collocation of advanced services equipment at central offices and remote terminals, even as it collocates such equipment itself in anticipation of its creation of an advanced services affiliate under the conditions imposed in the *Bell Atlantic/GTE Merger Order*.[49] That the FCC's order approving the Bell Atlantic GTE merger makes clear that any determination made in its *Project Pronto Order* applies equally to Verizon, not only confirms the Commission's assessment of discrimination by Verizon, it creates broad collocation obligations on the two largest LECs serving approximately two-thirds of the entire country.

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[47] *Ameritech Corp., Transferor and SBC Communications, Inc. Transferee*, CC Docket No. 98-141, Memorandum and Order FCC-00-336 (Rel. September 8, 2000) ("*Project Pronto Order*").

[48] *See Ameritech Corp., Transferor and SBC Communications, Inc. Transferee*, CC Docket No. 98-141, Memorandum and Order 14 FCC Rcd 14712 (1999)("*SBC/Ameritech Merger Order*").

[49] *See Applications of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control,*

C. The Commission Should Find Multifunction Equipment To Be Eligible For Central Office Collocation.

For the same reasons, ILECs must be required to provide collocation of any equipment that contains the features and functionalities enabling interconnection, despite additional telecommunications functionalities that equipment may contain. This would include equipment that enables interconnection and network access by routing data routing and other functions, including switching, to the extent that any such functionalities are not themselves viewed as enabling interconnection or access to UNEs. With developing technologies, integration of functionalities that was impossible in 1996 is now totally practical. One of the principal purposes of the Act was to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans.[50] In light of this purpose, there is no reason to believe that Congress intended to freeze the term equipment necessary for interconnection at the technology available in 1996, precluding collocation of subsequently-developed multi-functional technology. Therefore, it is reasonable to interpret Section 251(b)(6) as permitting collocation of a wide range of telecommunications equipment that performs many functions in addition to enabling interconnection and access to UNEs.

Denying CLECs the right to collocate advanced services equipment would effectively thwart CLECs' ability to compete if they could *not* do so. This may be readily seen by a quick review of the costs involved. First, the CLEC would have to run lines from the ILEC Central Office to its own switch site. And, this is on top of collocation space in the ILEC central office which would be necessary for interconnection and access to UNEs. When these costs are

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Memorandum Opinion and Order, FCC 00-221 (June 16, 2000) at ¶¶ 260 *et seq.* ("*BA/GTE Merger Order*")

[50] Sen. Rept. No. 104-230, 104th Cong. 1st Sess. (March 30, 1995) at pp. 1-2.

multiplied by the many times that would be required in order to use multifunction equipment to provide service, it is apparent that collocation of such equipment is necessary in order for CLECs to be able to effectively compete. This is especially true for less populated and rural areas. Accordingly, the Commission should conclude that collocation of multifunction equipment is necessary because of the economic and practical barriers to competition that would be created by a separate location of such equipment.

D. ILECs Must Be Required to Permit CLECs to Self-Provision Cross-Connection Between Collocators in ILEC Central Offices

The Commission should determine that the 251(c)(6) requirement that ILECs' provide physical collocation of equipment necessary for interconnection . . . at the premises of the local exchange carrier may be read as a matter of the ordinary and fair meaning of [the statute's] terms,"[51] to include interconnection with other CLECs' networks as well as the ILECs' network provided the other CLECs have interconnection points at the premises of the local exchange carrier." Under the literal definition of the statutory language, cross-connection is interconnection . . . at the premises of the local exchange carrier."

ILECs will doubtless argue that Section 251(c)(6) provides for collocation of equipment that interconnects to the *ILEC's* network. However, nothing in the plain meaning of the statute, its procompetitive purpose or its legislative history supports that argument. By its terms, Section 251(a) requires all carriers -- including the CLECs -- to interconnect with other carriers. Moreover, section 251(c)(2) requires that interconnection be provided on nondiscriminatory terms and conditions and at least equal in quality to that provided by the incumbent LEC to itself,

[51] *GTE Service Corp., supra*, 205 F.3d at 424.

an affiliate or another CLEC.[52] Cross-connection is necessary to put each collocating CLEC in a position to achieve the same interconnection with other CLECs as the ILEC provides to itself.

For the same general reasons that permitting collocation of multifunction of equipment is a reasonable condition of collocation of necessary equipment (assuming that multifunction equipment does not independently meet the necessary test), the Commission should also require ILECs to permit CLECs to self-provision cross-connection with other CLECs as a reasonable condition of offering collocation. Self-provisioned cross-connection is vital to CLECs' ability to compete and does not significantly affect ILECs. Of particular concern is the fact that the inability to directly cross-connect with other co-located CLECs would effectively thwart CLEC advanced optical networking initiatives that use dark fiber capacity leased from other carriers because adequate optical cross-connect services from ILECs are either unavailable and/or would degrade the quality of service that CLECs are able to provide in comparison to direct cross-connection between CLECs.

E. The Commission Should Reestablish Reasonable General Collocation Provisioning Standards.

The Commission can take several steps to help assure parity of access to ILEC central offices in accordance with the requirement that ILECs provide nondiscriminatory physical collocation. The Commission can start by re-adopting the collocation requirements in ¶ 42 of the *Collocation Order*, which the court vacated based on its finding that the Commission had provided insufficient justification for such requirements under the statute. First, the Commission should reinstate the requirement that CLECs be permitted to collocate in any unused space in the incumbent LEC premises. *Id.* RCN does not believe that the Commission intended -- in

[52] 47 U.S.C. § 251(c)(2).

originally imposing this requirement -- to authorize CLECs arbitrarily to collocate equipment at their whim. The Commission should clarify that such a requirement is intended to prevent the *incumbent LEC* from unilaterally placing arbitrary restrictions that would prevent collocation of CLEC equipment while preserving the space for future use by the incumbent.

Second, the Commission should reinstate its prohibition on the incumbent LEC unilaterally imposing an arbitrary or unreasonable requirement that the CLEC construct a room, cage, or similar structure for its equipment, collocate equipment on a separate floor, or create a separate entrance to its collocation space. Such separation requirements constitute clear barriers to entry not faced by the incumbent. For example, a requirement that CLECs collocate on separate floors or rooms creates the potential for ghettoization of CLEC equipment, reducing the universe of space available to CLECs, while leaving the incumbent LEC free to locate its equipment anywhere. Requiring CLECs to construct separate entrances, leaving CLECs free to use existing entrances, increases costs for CLECs while immunizing incumbent LECs from such costs. The Commission should require the incumbent LEC to certify in writing that the creating separate rooms, cages, or constructing separate entrance is necessary for purposes of some reasonable safety, engineering, security or some other technical consideration *that cannot be achieved through a less restrictive alternative.* The incumbent LEC should further certify in writing that collocation of its own equipment is subject to the same limitations and in no less a restrictive manner.

Finally, the Commission should specifically prohibit incumbent LECs from establishing intermediate points of interconnection in lieu of direct connection to its network facilities. Here, the Commission can rely *both* on the technical feasibility of such direct connection and the incumbent LEC's obligation to provide collocation on just and reasonable and nondiscriminatory

terms and conditions. Under the terms of the Act, incumbent LECs are obligated to provide interconnection at any technically feasible point within the carrier's network. 47 U.S.C. § 251(c)(2)(B). This requirement, by definition, precludes a requirement of indirect interconnection in circumstances where direct connection is feasible. Moreover, unless justified by technical, operational, safety, engineering or security considerations, such requirement places the CLEC at less than competitive parity with the incumbent LEC, thus violating the incumbent's obligation to offer interconnection at just and reasonable and nondiscriminatory terms and conditions. Accordingly, the Commission should prohibit ILECs from requiring *indirect* interconnection unless the incumbent LEC certifies in writing that it cannot overcome the conditions that mandate such requirement.

F. The Commission Should Establish Minimum Provisioning Intervals for the Full Range of Collocation Arrangements

The FCC has also requested comment on: (1) whether it should reduce the maximum provisioning interval for physical collocation arrangements to a number shorter than 90 days; and (2) whether it should establish separate minimum installation intervals for various types of collocation.

RCN applauds the decision of the Commission to adopt a maximum provisioning interval for physical collocation of 90 days. RCN believes, however, that as the incumbent LECs have gained more experience with collocating CLEC equipment, and in installing equipment used to provide advanced services both for the incumbent LEC itself and its tenant CLECs, shorter intervals have become appropriate. In particular, the Commission should adopt considerably *shorter* intervals where collocation necessitates *less* than the full complement of activities necessary for LECs to provision a full blown collocation application -- *i.e.*, for modifications or

additions to existing collocations, collocations within already prepared or conditioned space, or where the CLEC agrees to perform the work necessary to install a collocation cage. Of particular interest to RCN is the provisioning interval for augmenting existing collocation space necessary to install equipment associated with advanced services, such as splitters and cabling. Such collocation typically involves attaching equipment with a few bolts to existing structures and the attachment of pre-prepared cables. Thus, for example, the Texas Commission has affirmed GTE's obligation to provide collocation augments within 30 calendar days, which time frame SWBT already has specified in its collocation tariff.[53] Less generous, but still shorter than the 90 day interval for full collocation, is the 45-business day interval adopted by the Pennsylvania Commission.[54]

A similar reduction in provisioning intervals for collocation is appropriate where the CLEC is willing to construct portions of the collocation itself.

[53] *See* Docket No. 22168, *Petition of Covad Communications Co. and Rhythms Link, Inc. Against Southwestern Bell Telephone Co. and GTE Southwest Inc., etc.*, Interim Award, at 25.

[54] *See* Docket No. 22168, *Petition of Covad Communications Co. and Rhythms Links, Inc. Against Southwestern Bell Telephone Co. and GTE Southwest Inc, etc.*, Interim Award, at 25.

III. COLLOCATION AT REMOTE TERMINALS

A. Collocation At Remote Terminals of Line Cards, DSLAMS, and other Equipment Is Necessary for Interconnection and Access to UNEs.

As the use of fiber based DLC systems becomes more ubiquitous, due to the accelerating growth in the provision of advanced services, remote terminal are fast becoming the equivalent of the central office.[55] The Commission has already recognized the status of remote terminals as essential aggregation points for access to loops and other essential network facilities. *Id.* As such, the incumbent LECs must be required to provide CLECs the same access to remote terminals as they have today to central offices, opening access to a increasingly clear-cut bottleneck facility.

The critical role of the remote terminal in facilitating the provision of advanced telecommunications services cannot be overstated. Traditionally, with first generation xDSL technology, it was assumed that the customer must reside within 18,000 feet of the Digital Subscriber Line Access Multiplexed ("DSLAM") to receive reliable xDSL service. However, placing next generation DLC or IDLC equipment in forward-deployed remote terminals overcomes this operational roadblock, allowing local exchange companies to push deeper into its neighborhoods and install or upgrade neighborhood broadband gateways containing digital electronics.[56] The strategic assumptions underlying SBC plans have been widely recognized

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[55] *See UNE Remand Order* at 218.

[56] Thus, for example, SBC is on record with respect to its Project Pronto initiative for its claim that:

> SBC has two primary goals: to bring advanced broadband data services to nearly all customers, and to integrate its voice and data networks to more efficiently and effectively transport that traffic. That more than $6 billion Project Pronto initiative should make these goals a reality. The strategy includes plans to:
>
> Install fiber optics deeper into neighborhood networks and install or upgrade approximately 25,000 neighborhood broadband gateways containing *next generation digital loop carriers*. These neighborhood

(and emulated) by others in the incumbent LEC industry. In a recent public forum on *Competitive Access to Next-Generation Remote Terminals* held at the FCC on May 10, 2000, senior executives from three of the largest regional Bell Operating companies, together with representatives of major switch manufacturers and competitive local exchange companies all *agreed* in touting the advantages of next generation remote terminals in providing advanced services.

B. ILECs Must Have An Absolute Obligation to Provide Sufficient Collocation Space at Remote Terminals

In these circumstances, the FCC should adopt regulations to ensure that incumbent LECs have no less an obligation to provide collocation at remote terminals – on just and reasonable and nondiscriminatory terms and conditions – than they do at central offices.

First, nowhere in Section 251 (c)(6) of the Act is there any suggestion that the duty to provide physical collocation of equipment necessary for interconnection or access to unbundled network elements," 47 U.S.C. § 251(c)(6), is limited to central offices. As incumbent LECs move to deploy many central office functions to remote terminals, collocation at the remote terminal becomes increasing necessary to achieve interconnection and meaningful access to UNEs. To the extent that any service – that is provided by an incumbent LEC – *cannot* be provided by the CLEC without collocation at the remote terminal, the incumbent LEC must be obligated to provide such collocation. Otherwise, the incumbent LEC cannot possibly satisfy its obligation to provide nondiscriminatory interconnection that is at least equal in quality to that provided . . . to itself . . . ." 47 U.S.C. § 251(c)(2)(C). Nor can it satisfy its obligation to provide

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gateways will expand the reach of DSL service by taking the capabilities of the network closer than ever before to customers. *Project Pronto: SBC's Network Vision and Strategy* (emphasis added).

access to UNEs on just and reasonable and nondiscriminatory terms and conditions. 47 U.S.C. § 251(c)(3).

That the incumbent LECs have used the remote terminal as an obstacle to competition cannot be gainsaid. Verizon has taken the position that it need not allow data CLECs to engage in line sharing over DLC loops, contending that, by definition, line sharing can only be done over home-run copper. Verizon has rejected the plug and play option advocated by Covad – whereby CLECs collocate line cards in incumbent LEC DSLAMs – as somehow incompatible with the functionality of its own equipment, offering instead to permit adjacent collocation, where CLECs are left to obtain the necessary permits and easements and overcome the aesthetic objections of local homeowners to ubiquitously deployed remote terminal farms.

The incumbent LECs should have an absolute obligation to provide collocation space at remote terminals, there should be no distinction between current and future collocation space in remote terminals, and pricing should be consistent with forward-looking incremental cost pricing. In addition, incumbent LECs should not be permitted to use retail and wholesale demand projections as the basis for denying collocation space. Incumbent LECs should be required to provide additional space regardless of its demand forecasts. Otherwise they can effectively block CLECs from collocating in remote terminals by a combination of undersizing and overforecasting, knowing that CLECs may not be able to construct adequate space at all or in time to compete. Finally, to the extent incumbent LECs seek to consign CLECs to adjacent collocation, the incumbent LECs should bear the responsibility of resolving all issues relating to easements and land-use restrictions.

C. Disclosure of Remote Terminal Information Should be Required.

The same pre-application information as to space availability is needed for remote

terminals as for central offices. CLECs, particularly those providing advanced services, need to know if there is collocation space available at the remote terminal.

When a CLEC makes a request of an incumbent LEC for collocation space at a remote terminal, the incumbent LEC should, within 10 calendar days, provide it with schematic drawings of the remote terminal itself and all adjacent space, as well as information concerning: (1) the amount of collocation space available, and dimensions of any discrete blocks of space; (2) separate identification, through color coding or similar scheme, of the space occupied by the incumbent LEC, by type of equipment; (3) the number of other collocators and space they occupy; (4) any modifications or augments to the space since the last report; and (5) plans on the part of the incumbent to make any additional space available. In addition, the incumbent LEC should be required to maintain a web site indicating those premises that have no room for collocation.

D. ILECs Should Be Required to Deploy Remote Terminals That Support Interconnection By CLECs.

Finally, as mentioned above, the remote terminal is becoming the new central office. ILECs must not be permitted to artificially constrain interconnection at remote terminals by using equipment that unnecessarily constrains CLECs' ability to do so. RCN acknowledges that any restriction on the ability of incumbent LECs to select the equipment that best serves its needs is an inconvenience. However, at the same time, some uniformity is necessary to achieve the timely provision of competitive advanced services offerings under the Act. Thus, the incumbent LECs should be required to take steps to ensure that the equipment they deploy to interface with CLEC equipment should be outfitted with universal interfaces and protocols so as to enable efficient interconnection on just and reasonable and nondiscriminatory terms and conditions.

IV. COPPER LOOPS MUST BE MAINTAINED

The Commission seeks comment on the impact the deployment of NGDLC will have on copper facilities, *i.e.*, when the NGDLC is deployed as an overlay of existing copper facilities what will happen to these copper facilities. The Commission needs to ensure that these copper facilities are maintained in such a manner that they provide a viable alternate source of CLEC access to customers. The importance of these facilities has been by no means lessened by the NGDLC architecture, and in some cases, their importance has heightened, particularly to those CLECs whose business plans are focused on the use of copper facilities.

The concerns of CLECs over their ability to access customers in the NGDLC environment have been well-documented in Docket 98-141 and other dockets. These are not idle concerns. In Richardson, Texas, SBC deployed fiber-to-the-curb technology that effectively precluded CLEC provision of advanced telecommunication services including xDSL services. SBC coupled its fiber-to-the-curb deployment with elimination of most of the copper infrastructure in that network segment. CLECs collocated at the Richardson, Texas central office were left with "little if any access to copper loop UNEs for the provision of xDSL service." This precipitous removal of copper facilities rendered the expensive collocation arrangements CLECs made in Richardson, Texas useless, and precluded their ability to provide advanced services. This example illustrates in a nutshell how allowing ILECs unilateral, unfettered control over facility deployment could lead to the stunting of competition. In addition to the CLEC access issues, the continued use of copper facilities will be beneficial from a network perspective basis as well. Copper remains the most economical medium for the distribution portion of the loop, particularly given the high cost of fiber-to-the-curb technology. In addition, many of the technological advancements described in regard to fiber technology are

occurring with copper as well. ILECs recognize the huge investment they have made in the copper infrastructure and are looking to develop their fiber networks while at the same time getting more out of copper pairs. Thus, for the near future, at least, copper and fiber will co-exist on ILEC networks.

The "voluntary commitment" made by SBC and accepted by the Commission in its *Project Pronto Order* are a good starting point for a Commission policy with regard to spare copper facilities. SBC has stated that it will 1) refrain from retiring any copper pairs for one year 2) will refrain from retiring (over a three year period) more than 5 percent of the copper pairs terminated on the Main Distribution Frames in its LEC central offices; 3) disclose the incumbent LEC's criteria for retiring any copper plant; 4) notify CLECs of its intent to retire any copper plant at least 180 days in advance; 5) provide CLECs an opportunity to purchase any copper plant marked for retirement at net book value, or the highest bid, whichever is higher.[57] This proposal needs to be modified in light of the comments raised in Docket 98-141, and needs to be made mandatory for all ILECs. In particular ILECs should be required to maintain copper facilities for at least ten years. CLECs need that time horizon to "in order to adequately, finance, and implement business plans." In addition, the ILEC should be precluded from focusing its retirement in particular central office(s) such that they could effectively retire the copper loops in an entire area. Otherwise the ILEC could target its retirement plans to areas in which competition is thriving, thereby thwarting such competition, and promoting the interests of its affiliate.

V. THE COMMISSION SHOULD IMPLEMENT A NATIONAL SPACE RESERVATION POLICY FOR BOTH CENTRAL OFFICE AND REMOTE TERMINAL COLLOCATION.

[57] *Project Pronto Order* at ¶ 39.

The Commission clearly recognizes the value and importance of policies regarding the reservation of space in ILEC premises.[58] The Commission has recognized that ILECs have both "the incentive and capability to impede competition by reducing the amount of space available for collocation of competitors."[59] Unchecked ILEC space reservation will limit the amount of available collocation space and inhibit the timely deployment of competitive services, particularly advanced services.[60] Without policies limiting the time frame for reserving space, there is no check on how long ILECs may keep vital collocation space out of the reach of competitors. Pacific Bell, prior to the implementation of a space reservation policy by the California Public Utilities Commission, had an "unlimited" reservation policy for dissimilar equipment, *i.e.*, switching equipment, Main Distribution Frames, and power.[61] SBC has previously argued that space reservation periods of 10 to 20 years would be appropriate for such equipment.[62] Thus, without space reservation policies chunks of valuable potential collocation space could be cordoned off from competitors for years regardless of the true need to reserve such space.[63]

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[58] This section will focus on ILEC space reservation. While CLECs also reserve space, the abuse of space reservation and the anti-competitive effects is more an issue in regard to ILEC space reservation since they exert control over the premises. Any policy that this Commission formulates that allows for ILECs to reserve space should provide the same opportunities to the CLECs to reserve space.

[59] *Collocation Remand NPRM* at ¶ 50, *quoting Advanced Services Report and Order*, 14 FCC Rcd at 4793, ¶ 56.

[60] *Collocation Remand NPRM* at ¶ 50.

[61] *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Networks*, Decision 98-12-069, 1998 WL 995609, 69 (Ca. PUC 1998). Dissimilar equipment is equipment that will be deployed by the ILEC in the ILEC premises that will not be deployed by the CLEC. Similar equipment is equipment that both the ILEC and CLEC will likely deploy in an ILEC premises, *e.g.*, multiplexers.

[62] *Collocation Remand NPRM* at ¶ 49, n. 131.

[63] The space that is reserved is fully vacant space, and does not cover space that the ILEC may be deeming to be

Recognizing this, the Commission "strongly" urged state commissions to adopt space reservation policies. The issue of space reservation cries out for a national standard, however. It is laudable that state commissions in California, Texas, and Washington have implemented such policies. These policies will help ensure that competitors have space to collocate their equipment such that residents of those states may partake of competitive advanced services. In states where such policies have not been implemented, however, ILECs will be able to thwart competition by reserving space indefinitely. A baseline national standard needs to be established such that disparities in the amount of time ILECs may restrict the availability of collocation space will not lead to "inconsistent deployment of advanced services" throughout the U.S.[64]

The Commission has heretofore declined to implement a national standard for space reservation because it felt that states, given their knowledge of local circumstances, were in a better position to determine whether a carrier has reserved more space than is necessary or is utilizing space reservation policies that is impeding physical collocation.[65] The determination of how long an ILEC should be allowed to reserve space is not one that requires a state-specific or CO-specific determination. Rather in determining what is an appropriate time for space reservation, one must determine what is the time period that best reflects, and balances, the need of ILECs to plan their networks, with that of CLECs need to collocate their equipment.

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occupied but in actuality is being used to "warehouse" inactive or underutilized equipment. The Washington Utilities and Transportation Commission deemed this "warehousing" practice to be a "de facto reservation of space for future use." *Re MFS Communications Company, Inc.*, Docket Nos. UT-960323, UT-960326, UT-960337, 1998 WL 996190, 10 (WUTC 1998). Thus, usable space is already being foreclosed even before space is "reserved" by the ILEC.

[64] CC Docket No. 98-147, Reply to Oppositions to Sprint's Petition for Partial Reconsideration and/or Clarification at p. 9 (July 27, 1999)("*Sprint Reply*").

[65] *Collocation Remand NPRM*, at ¶ 52.

The Commission can determine a time frame that would reasonably allow for ILEC network planning and buildout that can apply in Michigan just as well as it would in Georgia. It is quite illuminative that three of the states that have implemented space reservation policies, California, Texas, and Washington, include two of the largest states in the United States (both in terms of area and population), and ones presumably with a large diversity of central office arrangements and space disputes. Yet, these states have implemented space reservation policies that apply in San Luis Obispo as well as Los Angeles; in Midland as well as Dallas. This is no way intended to mitigate the state PUCs' role in issues of space reservation. State PUCs would be the best entities to apply and police the space reservation polices; but the Commission should first establish and implement a national standard.

The Commission needs to shift its focus from space reservation to space enhancement. Much of the underlying basis for space reservation plans has been undercut by technological advancements. The record in this proceeding will undeniably demonstrate that telecommunications equipment is becoming smaller and more integrated. For instance, switching, transport, and power equipment are all being integrated in multi-functional equipment that occupies a fraction of the space needed before. Yet, ILECs argue that they need ten years to plan for the orderly growth and expansion of equipment such as main distribution frames and switches and two years for equipment such as multiplexers and fiber optic terminals.[66] Yet, equipment is not expanding, it is contracting, and equipment that used to take up significant amounts of space, such as switches, and main distribution frames are becoming smaller or

[66] *Sprint Reply* at p. 7.

marginalized.[67] Project Pronto is a demonstration of how evolving technological equipment is becoming smaller and can be rapidly deployed.[68] As this Commission has recognized, remote terminals are becoming the central offices of today, with many of the essential telecommunications functions being moved out to such structures. The quick way in which SBC plans to deploy these remote terminals demonstrates that network planning and expansion requires less time than it did a few years ago.

Thus, there is simply no basis for the excessive time periods ILECs seek to reserve space. The fact that ILECs are continuing to insist on such excessive space reservation time frames demonstrates that ILECs are not basing these policies on the realities of the market, but on their desire to leverage their control of available collocation space. The Commission has taken a wonderful first step in recognizing the way in which ILEC space reservation plans can impede competition and the need for the policies to check such plans. The Commission needs to take the next step and implement a national, uniform policy that will limit these space reservation plans. RCN proposes that a period of a year would be sufficient to give carriers an opportunity to engage in network planning. In the evolving telecommunications market, any period longer than a year is not needed and will exclude valuable space that can be used in ILEC premises.[69]

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[67] For instance, SBC's Project Pronto architecture utilizes integrated DLC technology that bypasses the main distribution frame altogether. *IL Line Sharing Order* at p. 11.

[68] As part of its Project Pronto, SBC will "install or upgrade approximately 25,000 neighborhood broadband gateways containing next-generation digital loop carriers." SBC Communications, Inc., *Project Pronto: SBC's Network Vision and Strategy* (November 1999).

[69] The time frame should not be equipment-specific, *i.e.*, the similar/dissimilar distinction should be eliminated. Technology is integrating equipment and blurring old definitional lines. There is no need for a longer time frame for equipment such as switches.

In addition, the Commission's focus needs to shift from allowing ILECs to reserve space to encouraging ILECs to utilize configurations and equipment that will enhance available space and allow for more carriers to be able to collocate. Rather than allowing ILECs to have the ability to reserve space for indefinite periods, policies should be implemented that will place on ILECs an affirmative obligation to ensure space is available both in the central office and remote terminals. Technology is providing ways to address the space limitation issues that have inhibited the development of competition to date. These developments should not be undercut by ILEC practices that will limit space in the future.

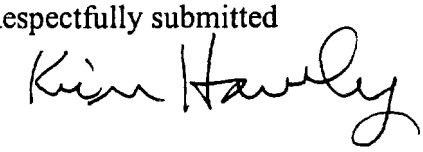
A classic example of this is how SBC has committed to making more collocation space available in remote terminals it deploys after September 15, 2000.[70] This shows that ILECs do have capabilities to plan their networks not only to meet their needs, but to provide for space to effectuate non-discriminatory access to their premises. It also suggests that up to this point, SBC was not providing for such space in its remote terminals given the lack of collocation space at the existing terminals. The Commission needs to implement policies that transforms the focus of network planning from unnecessarily reserving existing space in premises to encouraging the provision of more space in these premises. The focus has to switch from space reservation to space enhancement.

[70] *In the Matter of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, ASD File No. 99-49, Second Memorandum Opinion and Order, ¶ 34 (Sept. 8, 2000)("*Project Pronto Order*").

CONCLUSION

RCN respectfully requests that the Commission adopt collocation regulations in accordance with the foregoing comments.

Respectfully submitted



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Dated: October 12, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2000, the foregoing COMMENTS OF RCN TELECOM SERVICES, INC., CC Docket Nos. 98-147 and 96-98, were served via Hand-Delivery to the following:

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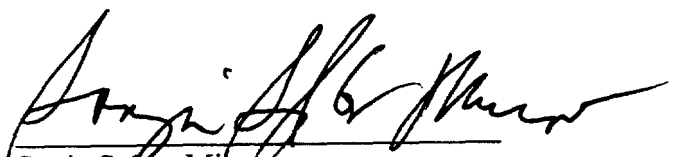

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